



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

TWELVE OAKS MEDICAL CENTER  
HOLLAWAY & GUMBERT  
3700 KIRBY DRIVE SUITE 1288  
HOUSTON TX 77098

**Carrier's Austin Representative Box**  
#54

#### **MFDR Date Received**

SEPTEMBER 21, 2005

#### **Respondent Name**

TEXAS MUTUAL INSURANCE COMPANY

#### **MFDR Tracking Number**

M4-06-1948-01

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary Dated September 21, 2005 taken from the Table of Disputed Services:** "IC failed to pay per DWC Rule 134.401 Acute Care Inpatient Hospital Fee Guidelines... Per DWC Rule 134.401(c)(6), claim pays @ 75% of total charges as charges exceeded \$40,000.00 stop-loss threshold. IC further failed to audit according to DWC Rule 134.401(c)(6)(A)(v)."

**Requestor's Supplemental Position Summary Dated October 4, 2005:** "This letter is to confirm that our client, Twelve Oaks Medical Center, hereby withdraws the service shown on the attached UB-92 as revenue code '990' 'PERSONAL ITEMS' with charge of \$239.50, which the carrier denied for 'U' – 'UNNECESSARY MEDICAL.' It is our understanding that withdrawal of this service will preclude submission for IRO review, and will allow this dispute to go forward for review by medical dispute resolution."

**Amount in Dispute:** \$4,192.36 (per updated *Table of Disputed Services*)

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated November 9, 2005:** "On 10/12/05 Texas Mutual responded to this dispute with Twelve Oaks Medical Center. In that response Texas Mutual stated it would issue a supplemental payment of \$8,369.87 under separate cover. That payment has been made."

**Respondent's Supplemental Position Summary Dated December 5, 2005:** "The requestor's total billed charges are \$57,021.11. Texas Mutual audited the billed charges – reducing the implants to cost plus 10% and reducing the antibiotics to cost plus 10% of those billed in excess of \$250/unit dose. For the implants this was \$1,100.00; for the Vancomycin, \$395.44, the Ceftriax, \$70.15. Texas Mutual subtracted the billed charge for the implants and the two antibiotics, \$7,155.76, from the billed amount of \$57,021.11, which equals \$49,865.35. Then the cost plus 10% of the implants and antibiotics, \$1,565.94 was added back to the audited amount of \$49,865.35, i.e. \$51,431.29. This amount is multiplied by the SLRF of .75 which produces \$38,573.47. Texas Mutual originally paid \$30,203.60. Texas Mutual issued a supplemental payment of \$8,369.87 to meet the MAR. For these reasons Texas Mutual believes no additional payment is due."

**Responses Submitted by:** Texas Mutual Insurance Company

### **SUMMARY OF FINDINGS**

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
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September 23, 2004 through October 4, 2004	Inpatient Hospital Services	\$4,192.36	\$0.00
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### ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

#### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.
3. 28 Texas Administrative Code §134.1, 27 *Texas Register* 4047, effective May 16, 2002, sets out the guidelines for a fair and reasonable amount of reimbursement in the absence of a contract or an applicable division fee guideline.

The services in dispute were reduced/denied by the respondent with the following reason codes:

#### **Explanation of Benefits**

- CAC – W4 – NO ADDITIONAL REIMBURSEMENT ALLOWED AFTER REVIEW OF APPEAL/RECONSIDERATION.
- CAC – 143 – PORTION OF PAYMENT DEFERRED.
- CAC – 24 – PAYMENT FOR CHARGES ADJUSTED. CHARGES ARE COVERED UNDER A CAPITATION AGREEMENT/MANAGED CARE PLAN.
- 420 – SUPPLEMENTAL PAYMENT.
- 793 – REDUCTION DUE TO PPO CONTRACT.
- 891 – THE INSURANCE COMPANY IS REDUCING OR DENYING PAYMENT AFTER RECONSIDERING A BILL.
- 480 – REIMBURSEMENT BASED ON THE ACUTE CARE INPATIENT HOSPITAL FEE GUIDELINE PER DIEM RATE ALLOWANCES.
- 719 – REIMBURSED AT CARRIER'S FAIR AND REASONABLE. COST DATA UNAVAILABLE FOR FACILITY. ADDITIONAL PAYMENT MAY BE CONSIDERED IF DATA IS SUBMITTED.
- 730 – DENIED AS INCLUDED IN PER DIEM RATE.
- 426 – M – REIMBURSED TO FAIR AND REASONABLE. CARRIER'S FAIR AND REASONABLE REIMBURSEMENT FOR VANCOMYCIN AND CEFTRIAX.
- 225 – N – DOCUMENTATION SUBMITTED DOES NOT SUBSTANTIATE THE SERVICE BILLED. THE BILLED CHARGES DO NOT MEET THE STOP LOSS METHOD STANDARD OF THE 8/1/97 ACUT
- CAC – 42 – CHARGES EXCEED OUR FEE SCHEDULE OR MAXIMUM ALLOWABLE AMOUNT.
- 790 – THIS CHARGE WAS REDUCED IN ACCORDANCE TO THE TEXAS MEDICAL FEE GUIDELINE.
- 920 – REIMBURSEMENT IS BEING ALLOWED BASED UPON A DISPUTE.

#### **Issues**

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

#### **Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above

was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The division received supplemental information as noted in the position summaries above. The supplemental information was shared among the parties as appropriate. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that "Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection..." 28 Texas Administrative Code §134.401(c)(6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "Audited charges are those charges which remain after a bill review by the insurance carrier has been performed." Review of the explanation of benefits issued by the carrier finds that the carrier deducted \$239.50 for personal convenience charges in accordance with §134.401(c)(6)(A)(v); therefore the audited charges equal \$56,781.61 (\$57,021.11 - \$239.50). The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 opinion rendered judgment to the contrary. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services." The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 Texas Administrative Code §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that "Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker." The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c)(6).
4. 28 Texas Administrative Code §134.401(b)(2)(A) titled General Information states, in pertinent part, that "The basic reimbursement for acute care hospital inpatient services rendered shall be the lesser of:
  - (i) a rate for workers' compensation cases pre-negotiated between the carrier and the hospital;
  - (ii) the hospital's usual and customary charges; and
  - (iii) reimbursement as set out in section (c) of this section for that admission

In regards to a pre-negotiated rate, the services in dispute were reduced in part with the explanation "CAC – 24 – PAYMENT FOR CHARGES ADJUSTED. CHARGES ARE COVERED UNDER A CAPITATION AGREEMENT/MANAGED CARE PLAN." No documentation was provided to support that a reimbursement rate was negotiated between the workers' compensation insurance carrier Texas Mutual Insurance Co. and Twelve Oaks Medical Center prior to the services being rendered; therefore 28 Texas Administrative Code §134.401(b)(2)(A)(i) does not apply.

In regards to the hospital's usual and customary charges in this case, review of the medical bill finds that the health care provider's usual and customary charges equal \$57,021.11.

In regards to reimbursement set out in (c), the division determined that the requestor failed to support that the services in dispute are eligible for the stop-loss method of reimbursement; therefore 28 Texas Administrative Code §134.401(c)(1), titled Standard Per Diem Amount, and §134.401(c)(4), titled Additional Reimbursements, apply. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code

§134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers' Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission.” The length of stay was eleven days. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of eleven days results in an allowable amount of \$12,298.00.

- 28 Texas Administrative Code §134.401(c)(4)(A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

Description of Implant per Itemized Statement	Quantity	Cost Invoice	Cost + 10%
Antibiotic Beads	1	\$985.00	\$1,083.50

- 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$329.00/unit for Vancomycin 1 gm and \$566.50/unit for Ceftriax 2gm. The requestor did not submit documentation to support what the cost to the hospital was for these items billed under revenue code 250. For that reason, additional reimbursement for these items cannot be recommended.

The total reimbursement set out in the applicable portions of (c) results in \$12,298.00 + \$1,083.50, for a total of \$13,381.50.

Reimbursement for the services in dispute is therefore determined by the lesser of:

§134.401(b)(2)(A)	Finding
(i)	Not Applicable
(ii)	\$57,021.11
(iii)	\$13,381.50

The division concludes that application of the standard per diem amount and the additional reimbursements under §134.401(c)(4) represents the lesser of the three considerations. The respondent issued payment in the amount of \$38,573.47. Based upon the documentation submitted, no additional reimbursement can be recommended.

## **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

## ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 additional reimbursement for the services in dispute.

**Authorized Signature**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Medical Fee Dispute Resolution Officer

12/19/2013  
\_\_\_\_\_  
Date

***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**